

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/25/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000685

FILED: _____

STATE OF ARIZONA

KENNETH M FLINT

v.

STEPHEN RYAN JOHNSON

LAWRENCE I KAZAN

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. 1412224

Charge: A. DUI/LIQUOR
B. DUI (BAC .10 W/IN 2 HRS OF DRIVING
C. SPEED GREATER THAN REASONABLE & PRUDENT

DOB: 03/08/76

DOC: 01/14/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on May 29, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Scottsdale City Court, the exhibits made of record and the Memoranda submitted by counsel.

The facts of this case indicate that Appellant, Stephen Ryan Johnson, was stopped by the Scottsdale Police on January 14, 1999 and accused of Driving While Under the Influence or Being in Actual Physical Control, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Having a Blood Alcohol Level Greater than .10 W/In 2 Hrs of Driving, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); and Speeding, a civil traffic violation in violation of A.R.S. Section 28-701(A). Appellant made a Motion to Suppress/Dismiss based upon the issue of "reasonable suspicion" by the Scottsdale Police officers to make a stop of his vehicle. That motion was argued June 12, 2001 before the Honorable Ray Taylor, Scottsdale City Court judge. The motion was denied at the conclusion of the oral argument. Appellant's jury trial continued and Appellant was found guilty/responsible of the charges. Appellant has filed a timely Notice of Appeal in this case.

The only issue presented on appeal is whether the trial court erred in denying Appellant's Motion to Dismiss, wherein Appellant claimed that the police lacked a "reasonable suspicion" to stop his vehicle. Appellant claims that the Scottsdale Police officers had no "reasonable suspicion" which would justify the stop of his vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from the facts, reasonably warrant the police officer's suspicion that

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the accused, committed, or was about to commit, a crime.¹ These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."² A.R.S. Section 13-3883(B) also provides, in pertinent part, authority for police officers to conduct an "investigative detention":

A peace officer may stop and detain a person as is reasonable necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.³ In Whren⁴, the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable

¹ Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1988); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

² United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed. 2d 621, (1981).

³ Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

⁴ Id.

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cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.⁵

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.⁶ An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.⁷ This Court must review those factual findings for an abuse of discretion.⁸ Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.⁹ This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.¹⁰

In this case the trial judge explained his ruling denying Appellant's Motion to Suppress/Dismiss. The trial judge explained:

As it relates to this motion, Mr. Kazan, I'm going to deny your motion. I believe that there was suspected activity on behalf of the driving of the Defendant, namely, the visual 40 (miles per hour) in that 35-mile-an-hour zone.¹¹

⁵ Id.

⁶ *State v. Gonzalez-Gutierrez*, 1987 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Magner*, Supra.

⁷ Id.

⁸ *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

⁹ *State v. Chapple*, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

¹⁰ *State v. Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778; *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

¹¹ R.T. of June 12, 2001, at page 126.

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The trial judge's ruling is supported by the record. Scottsdale Police Officer Whitcomb testified that he observed Appellant's vehicle traveling 40 miles per hour within a posted 35 mph speed zone.¹¹ The officer also described hearing the tires squeal as Appellant turned the corner:

... I could hear what I described in my report as - - a screeching sound from the tires, which is consistent which - - with what is called a scuff skid.

And that, a scuff skid is, as opposed to tires peeling out and, you know, breaking loose on pavement, a scuff skid is the sound that a car will make when the tires are screeching as they are kind of rubbing side ways during a turning movement, specifically occurs during turning movements for - - for the sake of the scuff.

So I heard - - I could hear a very distinct screeching sound from the tires as the vehicle was going through the turning movement.¹²

This Court determines *de novo* that the facts cited by the trial judge, and the facts contained within the trial court's record, do establish a reasonable basis for the Scottsdale Police officers to have stopped the automobile driven by the Appellant. The trial judge did not err in denying Appellant's Motion to Suppress/Dismiss.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Scottsdale City Court.

¹¹ R.T. of June 11, 2001, at pages 53-55.

¹² Id. at page 56.

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IT IS FURTHER ORDERED remanding this matter back to the
Scottsdale City Court for all future proceedings in this case.